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SERVICE DATE - JANUARY 2, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 641X)

CSX TRANSPORTATION INC. - DISCONTINUANCE EXEMPTION IN KNOX COUNTY, TN

Decided: December 21, 2003

By petition filed on September 15, 2003, CSX Transportation, Inc. (CSXT) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over approximately 1.2 miles of rail line in CSXT's Central Region, Appalachian Division, KD Subdivision, Second Creek Spur, extending from Valuation Station 15304+87 to Valuation Station 15368+89 in Knoxville, Knox County, TN. Notice of the filing was served and published in the Federal Register on October 3, 2003 (68 FR 57511-12). The exemption will be granted, subject to standard employee protective conditions.

BACKGROUND

The only shipper on the line, PSC Metals, Inc. (PSC), uses rail primarily to send and receive iron/steel scrap shipments. According to CSXT, the PSC facility generates minimal traffic on CSXT's line¹ and currently utilizes motor carrier transportation for both inbound and outbound shipments.

CSXT states that providing service to PSC is difficult because CSXT has an "island" operation at that location. According to CSXT, because the configuration requires a CSXT train to travel over the line of another carrier that also provides service to PSC, Norfolk Southern Railroad Company (NSR), it takes much longer to serve PSC than if CSXT had direct access to the shipper's facility. CSXT states that not only did it serve a copy of the instant petition on PSC, but it also discussed the possibility of discontinuance with the shipper prior to seeking the exemption. PSC has not filed a reply to CSXT's petition.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail carrier may not discontinue operations without the Board's

¹ PSC used CSXT for 127 carloads in 2001, 85 carloads in 2002, and approximately 60 carloads in the first 9 months of 2003.

prior approval. Under 49 U.S.C. 10502, however, the Board must exempt a transaction or service from regulation when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions, and encourage efficient management by relieving CSXT of the costs of maintaining and operating the line [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation is not necessary to protect shippers from the abuse of market power. The only shipper on the line, PSC, will continue to receive rail service from NSR and has other transportation alternatives available. Given the finding regarding market power, it is not necessary to determine whether the proposed discontinuance is limited in scope. Nevertheless, to ensure that PSC is informed of the Board's decision, CSXT will be required to serve a copy of this decision on the shipper within 5 days of the service date of this decision and certify to the Board that it has done so.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, the employee protective conditions set forth in Oregon Short Line R. Co.-Abandonment-Goshen, 360 I.C.C. 91 (1979), will be imposed.

Because this is a discontinuance proceeding and not an abandonment, the Board need not consider offers of financial assistance (OFAs) to acquire the line for continued rail service (the OFA provisions for a subsidy to provide continued rail service do apply to discontinuances), trail use requests, or requests to negotiate for public use of the line. This proceeding is also exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b). Therefore, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 10903 the discontinuance of service by CSXT of its operations as described above, subject to the employee protective conditions in Oregon Short Line R. Co.-Abandonment-Goshen, 360 I.C.C. 91 (1979).

2. CSXT is directed to serve a copy of this decision on PSC within 5 days after the service date of this decision and to certify to the Board that it has done so.

3. An OFA under 49 CFR 1152.27(b)(2) to subsidize continued rail service must be received by the railroad and the Board by January 12, 2004, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by a \$1,100 filing fee. See 49 CFR 1002.2(f)(25).

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

5. Petitions to stay must be filed by January 20, 2004. Petitions to reopen must be filed by January 27, 2004.

6. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective February 1, 2004.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary